

## REPORT OF THE COMMITTEE ON CONTRACT COMPLIANCE

April 13, 2005

The Honorable,  
The Board of Commissioners of Cook County

### ATTENDANCE

Present: Chairman Steele, Vice Chairman Silvestri, Commissioners Maldonado, Moreno and Peraica (5)

Absent: Commissioners Butler and Goslin (2)

**\*Commissioner Butler was absent due to a meeting at Provident Hospital.**

Also

Present: Commissioners Claypool, Daley, Gorman, Quigley and Suffredin; Colette Holt, Attorney at Law and MBE/WBE Consultant; Betty Hancock Perry, Contract Compliance Administrator, Office of Contract Compliance and Gladys Bedenfield, Team Leader Over Certification, Office of Contract Compliance

Ladies and Gentlemen:

Your Committee on Contract Compliance of the Board of Commissioners of Cook County met pursuant to notice on Wednesday, April 13, 2005 at the hour of 9:30 A.M. in the Board Room, Room 569, County Building, 118 North Clark Street, Chicago, Illinois.

Your Committee has considered the following items and upon adoption of this report, the recommendations are as follows:

267845 A RESOLUTION TO DEVELOP CONSTITUTIONAL CONTRACT SET-ASIDE PROGRAM FOR MINORITY AND WOMEN-OWNED BUSINESSES (PROPOSED RESOLUTION). Submitting a Proposed Resolution sponsored by Forrest Claypool, County Commissioner; Co-Sponsored by Mike Quigley and Larry Suffredin, County Commissioners.

### PROPOSED RESOLUTION

#### **RESOLUTION TO DEVELOP CONSTITUTIONAL CONTRACT SET-ASIDE PROGRAM FOR MINORITY AND WOMEN-OWNED BUSINESSES**

**WHEREAS**, opening the doors of economic opportunity to minority and women-owned businesses should be a top priority of County government; and

**WHEREAS**, Cook County government spends hundreds of millions of dollars annually for goods and services; and

**WHEREAS**, recent revelations show that Cook County issues a mere seven percent of its construction contracts annually to minority businesses including a mere one percent to African-American companies and one percent to women-owned businesses; and

**WHEREAS**, Cook County government serves a diverse population that is approximately 26 percent African-American, 20 percent Hispanic, and five percent Asian, according to the U.S. Census Bureau; and

**WHEREAS**, Cook County government should reflect to the extent possible the diversity of its citizens; and

**WHEREAS**, Cook County government can use its vast contracting opportunities to assist in the development and growth of small and minority-owned businesses; and

**WHEREAS**, the City of Chicago, the Chicago Park District and other government agencies have proven successful in awarding high percentages of government contracts to minority and women-owned businesses; and

**WHEREAS**, court decisions have required a higher standard of proof of past discrimination in order to justify set-aside programs, as well as more narrowly-tailored remedies for such discrimination; and

**WHEREAS**, to meet those new standards requires an extensive and sophisticated fact-finding and legal process.

**NOW, THEREFORE, BE IT RESOLVED**, that Cook County Board President John H. Stroger, Jr. appoint a special task force charged with developing standards necessary to meet recent court decisions and reconstitute Cook County's set-aside program for minority and women-owned businesses; and

**BE IT FURTHER RESOLVED**, that the Cook County Board, upon the recommendation of the President, hire an outside expert experienced and skilled in establishing the legal steps, information and fact gathering, public processes and other measures necessary to create and forward to the Cook County Board of Commissioners a contract set-aside program that meets constitutional muster; and

**BE IT FURTHER RESOLVED**, that the contract compliance division of the finance department of Cook County shall, in consultation with the purchasing agent, develop a target-market program for small or economically-disadvantaged businesses as a first step in opening new opportunities for the many minority and women-owned businesses that would qualify, including those small companies not owned by minorities.

**BE IT FURTHER RESOLVED**, that the task force report to the Cook County Board within 90 days as to its progress and present a timeline for presenting a new and legal contract set-aside ordinance to the Cook County Board of Commissioners for its consideration, as well as other recommended steps to encourage and support greater participation by minority and women-owned businesses in County contracting.

**\*Referred to the Committee on Contract Compliance on 10/19/04.**

**Vice Chairman Silvestri, seconded by Commissioner Peraica, moved to Receive and File Communication No. 267845. The motion carried.**

270506 A RESOLUTION TO CONDUCT AN OUTSIDE INDEPENDENT AUDIT OF ALL CURRENT MINORITY BUSINESS ENTERPRISE/WOMEN'S BUSINESS ENTERPRISE (MBE/WBE) CONTRACTS TO DETERMINE THE LEGITMACY OF THEIR CURENT MBE/WBE STATUS (PROPOSED RESOLUTION). Submitting a Proposed Resolution sponsored by Mike Quigley, County Commissioner.

PROPOSED RESOLUTION

**WHEREAS**, the 2000 Census determined that minorities account for 52.4 percent of the population of Cook County; and

**WHEREAS**, minority-owned businesses with paid employees constitute only 14.5 percent of the total number of firms, 2.9 percent of total business sales and receipts, 4.8 percent of total employees, and 3.6 percent of total payroll in Cook County, according to the 1997 Economic Census; and

**WHEREAS**, women-owned businesses with paid employees constitute only 16 percent of the total number of firms, 4.1 percent of total business sales and receipts, 7.7 percent of total employees, and 5.7 percent of total payroll in Cook County, according to the 1997 Economic Census; and

**WHEREAS**, this dramatic under-representation of minorities and women in the economic life of Cook County is a serious socioeconomic problem; and

**WHEREAS**, the certification of women and minority business enterprises was originally established in order to help women and minority-owned businesses by increasing their opportunities and ending the disparity in contracts awarded to women and minority owned businesses; and

**WHEREAS**, the Cook County Board of Commissioners rightly enacted the Cook County Minority Business Enterprise/Women's Business Enterprise Ordinance to address the problem of low minority and women-owned business participation; and

**WHEREAS**, abuse in the County's minority and women-owned business assistance programs harms those minority and women-owned businesses which abide by the rules and should be the legitimate beneficiaries of the Cook County Minority Business Enterprise/Women's Business Enterprise Ordinance; and

**WHEREAS**, recently a sub-contract with a county certified minority business was found by a federal magistrate to serve no "commercially useful" function and has exposed the County to lawsuits; and

**WHEREAS**, other local government bodies, such as Maricopa County, Arizona, have determined that it is better to outsource their MBE/WBE certification programs because outsourcing is more cost effective, non-politicized, and objective.

**NOW, THEREFORE, BE IT RESOLVED**, that an outside, independent, audit of all prime contractors who have subcontractors participating in the MBE/WBE program ~~contracts~~ be conducted to determine the legitimacy of their current MBE/WBE status, and the degree to which the prime contractors are adhering to their subcontractor obligations in accordance with the rules of the MBE/WBE program; and

**BE IT FURTHER RESOLVED**, that the County should immediately begin the process of outsourcing the certification of MBE/WBE contractors through a competitive bid process and that the sole function of the Cook County Office of Contract Compliance should be to monitor certified MBE/WBE's compliance with the MBE/WBE program including performing periodic site visits to MBE/WBE business locations, verifying prime contractor contractual obligations to subcontractors, and expanding the vendor outreach program.

**\*Referred to the Committee on Contract Compliance on 04/06/05.**

Commissioner Quigley recommended that all of the existing purchasing ordinances and amendments be compiled into one purchasing ordinance; he noted that the Ethics Ordinance includes all relevant ordinances and amendments.

Commissioner Suffredin clarified that all County ordinances are currently being codified and that Chapter Ten of this codification will compile contract compliance ordinances and amendments.

Colette Holt, Attorney at Law and MBE/WBE Consultant, provided the following status report regarding the development of the proposed MBE/WBE Ordinance:

As a preface, Ms. Holt stated that Cook County affirmative-action program had been deemed unconstitutional by the federal government. However, the outcome of recent relevant court cases indicates that the legal climate might be conducive to creating a new, County interim affirmative action ordinance that would pass "strict constitutional scrutiny."

Ms. Holt next explained the various steps that are being undertaken to create a new ordinance regarding only the construction portion: The Purchasing Agent submitted a mailing list and a list of quotations submitted for all Fiscal Year 2004 open-market quotations. Data is also being collected regarding the effectiveness of MBE/WBE ordinances nationwide; this data supports the creation of such a County ordinance. National data specifically reveals that when discrimination ordinances are struck down minority bid participation plummets. Relevant court decisions in other jurisdictions are being reviewed. Also being reviewed is the effectiveness of the County's race- and gender- neutral procedures currently being utilized in construction purchasing, as well as the County's contracting policies and procedures.

After this research and analysis has been completed, Ms. Holt will draft a proposed interim ordinance to be reviewed by County officials and their attorneys. Recommendations by these parties will then be reviewed and incorporated into the proposed interim ordinance. A more complete analysis would have to be performed in order to put forward a legally sustainable, permanent ordinance. Ms. Holt hopes to tender a proposed interim ordinance to the Board by the start of summer.

Commissioner Quigley asked whether the current Ordinance is being revised and reinstituted.

Ms. Holt replied in the negative. She stated that, rather, the new proposed interim ordinance is based on new evidence which supports the position that MBE/WBE programs are effective and are also consistent with the federal constitution.

Commissioner Quigley inquired when Ms. Holt began her duties as the MBE/WBE Consultant.

Ms. Holt replied that she has been conducting research and analysis regarding the proposed interim ordinance for approximately four to six weeks.

In response to Commissioner Claypool's inquiry, Ms. Holt provided an overview of the City of Chicago's Task Force which is investigating this issue.

Commissioner Claypool asked whether Ms. Holt has a formal contract with Cook County regarding her work on the proposed interim ordinance.

Ms. Holt replied that she was tendered a letter that she considered it in essence to be a contract.

Commissioner Claypool voiced his frustration at the amount of time it took to bring Ms. Holt on board as a MBE/WBE consultant.

Commissioner Suffredin asked whether the Diversity Action Committee has been involved in research and analysis for the proposed interim ordinance.

Ms. Holt replied in the affirmative.

Commissioner Maldonado inquired when Ms. Holt expects to be finished drafting the proposed interim ordinance.

Ms. Holt replied that she expects to be finished with the draft by the end of June.

Commissioner Maldonado asked whether the proposed interim ordinance will only address the construction industry.

Ms. Holt replied in the affirmative, noting that this was the only part of the existing ordinance that had been enjoined.

Commissioner Maldonado inquired whether Ms. Holt will be involved in monitoring the program.

Ms. Holt replied in the negative.

Commissioner Moreno provided the following outlined regarding the reasonable timeline followed to expedite the drafting of the proposed interim ordinance and to bring Ms. Holt on board in a timely manner: Commissioner Claypool put forth the proposal in October 14, 2004. The contract was authorized by the president in December of 2004. The contract proceeded through the normal channels; as a professional services contract no Board approval was required. The contract was executed in February 2005, approximately one month before Ms. Holt began her work with the proposed interim ordinance.

Commissioner Gorman asked whether the proposed interim ordinance will stipulate that a fixed percentage of contracts must be awarded to minority-owned businesses.

Ms. Holt replied in the negative. She explained that this would not pass “strict constitutional scrutiny.”

Commissioner Moreno requested that Ms. Holt provide a report on the constitutional requirements for the proposed interim proposal.

Ms. Holt agreed to provide this report to the Board.

Betty Hancock Perry, Contract Compliance Administrator, Office of Contract Compliance, provided an explanation of the certification and recertification processes which the Office of Contract Compliance conducts on behalf of minority-owned businesses and women-owned businesses. She detailed the processes as follows:

Applications for certification and recertification are assigned to a certification officer who reviews the file to determine whether all necessary documents are submitted. A checklist is utilized to determine an applicant's eligibility for the MBE/WBE program. If the application is incomplete, or required documents are not submitted, a letter is written to the applicant requesting submission of the missing pieces of the application within ten calendar days. If there has been no submittal by the tenth day, a second notice is sent notifying the applicant that their submittal is past due. If the applicant does not respond, the application becomes inactive. If clarification of the application is needed, a letter is sent to the applicant requesting clarification. If clarification is not received, the officer proceeds to write a pre-denial letter explaining why, based on the eligibility requirements, the applicant's firm is not certifiable. This pre-denial letter is then presented to the denial committee, which is comprised of certification officers. This denial committee reviews the file to either approve or disapprove the pre-denial letter. If a majority of the members of the denial committee are in agreement with the pre-denial letter, they approve it, and this letter is sent to the applicant. The applicant's firm then has fifteen days to respond in writing and to submit any documents which might cause a reversal of the denial committee's decision. If the applicant does not respond within the allotted time, or the documents submitted are not satisfactory, then a final denial letter is sent to the applicant. The firm is then placed on the denial certification list; the consequences of being on this list are that the firm can neither bid nor subcontract as a MBE/WBE enterprise on Cook County contracts, regardless of their certification with the City of Chicago or any other acceptable certifying agencies. If all documents are reviewed and found to be satisfactory, a site visit is performed by a compliance officer. An on-site investigation report is completed at the firm, and pictures are taken of the facility. A thorough final review is completed and a letter of certification is issued to the applicant.

Regarding recertification, the applicant's submitted documents are reviewed for new information and changes. If the reviewer concludes that the applicant's firm is not eligible for recertification, the applicant's firm is notified of this in writing, the applicant is decertified and is placed on the denial list. If the applicant indicates that no information has changed, the officer reviews the file utilizing the items on the check list. If the applicant has not submitted all necessary documents or if the application is incomplete, a letter is sent to the applicant's firm indicating these findings. If there is no response within the allotted time, the firm is inactivated. When an application is received that includes all necessary information and documents, the applicant is issued a letter of recertification indicating their area of specialty.

Commissioner Quigley asked whether businesses that are certified as MBE/WBE by other governmental agencies are automatically granted certification by the County.

Ms. Hancock Perry replied in the affirmative, for being included on a bid. However, the Office of Contract Compliance will then require the vendor to certify with Cook County.

Commissioner Quigley inquired what action the County takes if a business certification is revoked by another governmental agency.

Ms. Hancock Perry replied that an investigation is begun. Additionally she stated that if an outside source claims that a business is out of compliance, an investigation is also begun.

Commissioner Quigley inquired what measures are undertaken to ensure that an MBE/WBE business is not a front for a white-owned business.

Ms. Hancock Perry replied that site checks are performed and payrolls are reviewed to verify personnel.

Commissioner Quigley asked whether the Contract Compliance Department reports to the Board that the MBE/WBE status of a business has been revoked or if this is only addressed internally within the Contract Compliance Department.

Ms. Hancock Perry replied that this is only addressed within the Contract Compliance Department.

Commissioner Quigley inquired whether Ms. Hancock Perry would consider outsourcing any of the contract compliance work so as to avoid any conflict with the Ethics Ordinance.

Ms. Hancock Perry replied in the negative.

Commissioner Maldonado inquired what sanctions are levied upon a business when the Contract Compliance Department determines that this business has fraudulently claimed MBE/WBE status.

Ms. Hancock Perry replied that the case is referred to the State's Attorney's Office, and if the fraud is confirmed, the culpable business is barred from doing further business with the County. She further added that payment would possibly be withheld from the fraudulent prime contractor.

Commissioner Maldonado inquired whether the existing Ordinance allows brokers to participate in the affirmative action program.

Ms. Hancock Perry replied in the affirmative.

In response to Commissioner Maldonado's inquiry, Ms. Hancock Perry and Gladys Bedenfield, Team Leader Over Certification, Office of Contract Compliance, provided statistics regarding the following: the number of contracting and subcontracting businesses participating in the affirmative action program; the number of decertified businesses; and the specific allocation of Contract Compliance Department staff to various duties.

Commissioner Maldonado voiced his concern that the Contract Compliance Department staff is not large enough to adequately monitor contract compliance.

Commissioner Maldonado inquired whether Ms. Hancock Perry would support an audit of prime contractors and MBE/WBE subcontractors.

Ms. Hancock Perry replied in the negative.

Commissioner Peraica reiterated Commissioner Quigley's suggestion that outside auditing of MBE/MWE firms would be productive.

The following people offered testimony:

1. Hermene Hartman – President, ABLE
2. Claire M. Williams – Director of Marketing, Environmental Design
3. Tracey Alston – President, Danielle Ashley Communications
4. Dr. Helen A. Randolph – President, 3 R Health Care
5. Vince Rangel – Rangel & Associates
6. Donna Gaines – Rainbow PUSH Coalition Trade Bureau
7. Cesar Santoy – Executive Director, HAGIA
8. Simone Travis – Cosmopolitan Chamber of Commerce
9. Jay Stewart – Executive Director, Better Government Association
10. Zakrysha (Zak) Hayes – President, Precise Healthcare Staffing
11. Norma Williams – President and CEO, NJW Associates
12. Martin P. Greene – Partner, Greene and Letts/ABLE
13. Wallace "Gator" Bradley – President and CEO, United In Peace, Inc.
14. George Blakemore – Concerned Citizen

**Commissioner Maldonado, seconded by Vice Chair Silvestri, moved to Introduce and Defer the amendments to Communication No. 270506. The motion carried.**

**Vice Chairman Silvestri, seconded by Commissioner Maldonado, moved to Defer Communication No. 270506. The motion carried.**

**Vice Chairman Silvestri moved to adjourn the meeting, seconded by Commissioner Maldonado. The motion carried and the meeting was adjourned.**

Respectfully submitted,  
Committee on Contract Compliance

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Bobbie L. Steele, Chairman

Attest:

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Michelle Harris, Secretary